

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #03-08**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Sales tax on testing of sprinkler systems.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and

(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[The Taxpayer] provides services to its customers. Among the services the taxpayer provides is the testing of sprinkler systems that have been installed for fire protection in buildings.

The sprinkler systems are those ordinarily found in buildings. They are permanently installed, intended to remain in the building they are installed in, and are considered to become part of the building. They are not normally removed once installed, and can be removed only with damage to the building.¹

In performing the tests, the taxpayer sends a representative to the site, where he will perform a manual test on the system to determine if it is operating properly. In addition, he will determine if the system monitor is properly receiving the alarm generated by the test. This person never performs any repair services. He simply runs a test on the system. If he determines that the system is not operating properly, then a repairman is dispatched to make the repair.

The test of the system is always billed separately. If the repair is needed, the bill for that service is never lumped together with the bill for the test. Systems are tested at various intervals, depending upon the needs of the customer. Some tests are performed monthly, some bi-monthly, some semi-monthly, and others only annually.

QUESTION

Is the charge for the testing of the system subject to sales tax?

RULING

No.

ANALYSIS

Tenn. Code Ann. § 67-6-205 levies the sales tax on "the gross charge for all services taxable under this chapter." A "retail sale" is defined to include a "taxable sale of tangible personal property or specifically taxable services to a

¹ The information in this paragraph was not contained in the written ruling request, but was stated by the person requesting the ruling in a telephone conversation.

consumer or to any person for any purpose other than resale.” Tenn. Code Ann. § 67-6-102(a)(25)(A). The sales tax does not apply to all services; it applies only to those services specifically enumerated by the statute. *Ryder Truck Rental, Inc. v. Huddleston*, 1994 Tenn. App. LEXIS 444.²

The taxable services are listed in Tenn. Code Ann. § 67-6-102(a)(25)(F). Testing services are not among the services listed and therefore testing service, standing alone, is not subject to tax.

However, the statute does provide for the taxation of repair services performed on tangible personal property. Tenn. Code Ann. § 67-6-102(a)(25)(F)(iv). If the sprinklers are tangible personal property, the testing services, if performed in conjunction with contemplated repairs, are arguably “repair services.” TENN. COMP. R. & REGS. 1320-5-1-.54(2) states, in pertinent part:

"[R]epair services" and "repairs" of tangible personal property shall mean and include any one or all of the following for a user and consumer; ...;
"service calls" where any repair work is done or contemplated;

On the other hand, repairs performed to real property are not included among the taxable services enumerated in Tenn. Code Ann. § 67-6-102(a)(25)(A). TENN. COMP. R. & REGS. 1320-5-1-.54(2) provides additional guidance, stating in pertinent part:

Repair services and repairs of tangible personal property shall not include any maintenance or other work on buildings, or electrical wiring, plumbing, or fixtures attached to and a part of any real property;

Therefore, in view of the above analysis, it is necessary to determine whether the sprinkler systems constitute real property or tangible personal property. If the systems are realty, the testing services cannot constitute “repairs” or “repair services.”

Whether the tangible personal property remains tangible personal property after installation or becomes part of the realty must be determined on a case by case basis by applying the law of fixtures to the facts at issue. The Tennessee Supreme Court has stated the test as follows:

“In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the use to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold. The usual test is said to be the intention with which a

² In *Ryder Truck Rental*, the court was not addressing “services that are a part of the sale of tangible personal property”. These services are includible in the sales price and therefore taxable, pursuant to Tenn. Code Ann. § 67-6-102(a)(27).

chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture.” *Magnovox Consumer Electronics v. King*, 707 S.W.2d 504, 507 (Tenn. 1986).

In *General Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974), the Court examined carpet that was laid in a commercial building. The Court found that the carpet became part of the realty because the parties installed it with the intent that it remain in place for the length of its useful life. *Id.* at 243. Similarly, under the facts presented, the sprinkler systems at issue here are intended to remain part of the building for the useful life of the system. Accordingly, the sprinkler systems, once installed, become part of the real property.

Since the sprinkler systems are real property, repairs to them, including any testing services that arguably might be a “service call” included in the definition of “repair services” or “repairs” in TENN. COMP. R. & REGS. 1320-5-1-.54(2), are not subject to the sales tax.³

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APPROVED: Loren L. Chumley
Commissioner

DATE: 9/22/03

³ In the ruling request, the taxpayer assumes the repair service is subject to tax. According to the analysis in this ruling, that assumption is incorrect.